

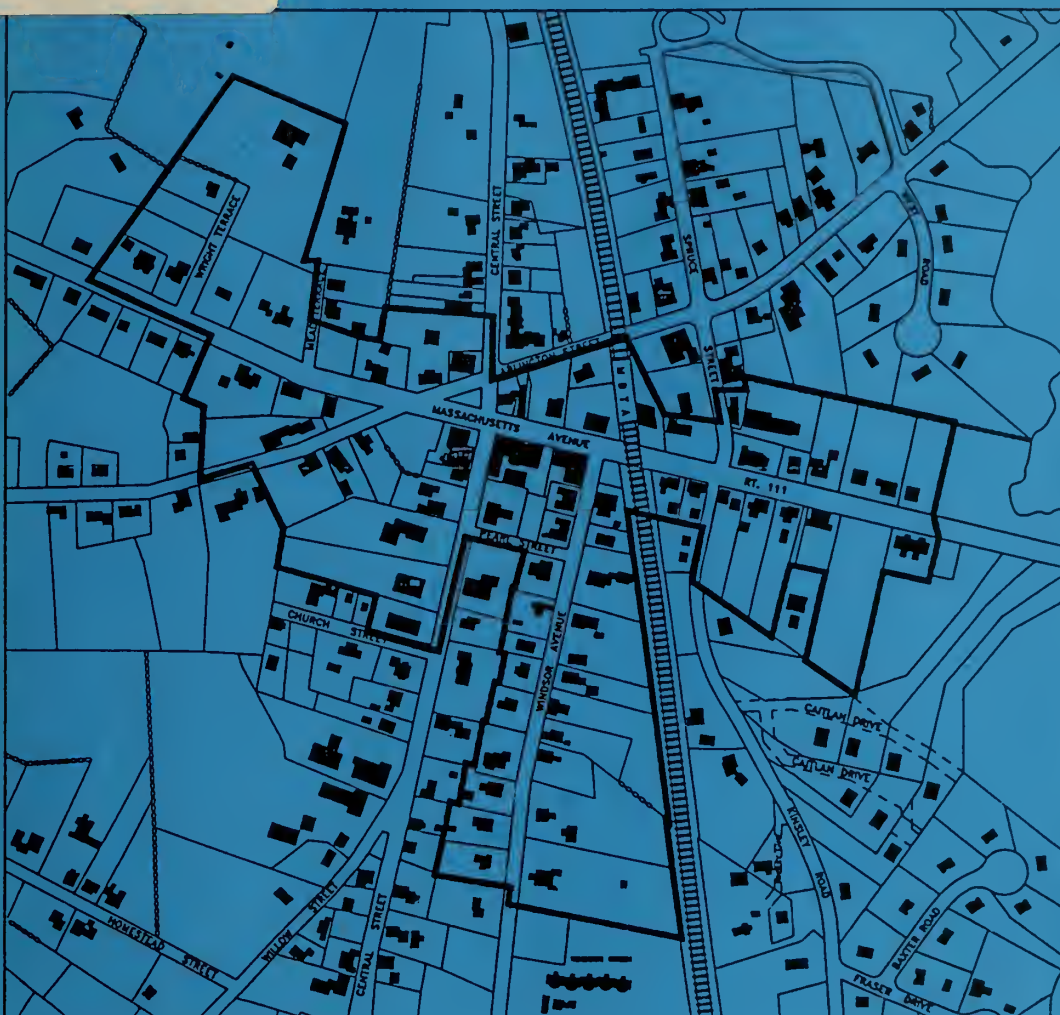
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ESTABLISHING LOCAL HISTORIC DISTRICTS

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MASSACHUSETTS HISTORICAL COMMISSION

A Division of the Office of the Secretary of State

Michael Joseph Connolly, Secretary of State, Chairman, MHC

80 Boylston Street

Boston, MA 02116-4802

ES81/994

Establishing Local Historic Districts

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On the Cover:

West Acton Historic District Map. Roland Bartl, Acton Town Planner. 1991. The West Acton Historic District, protects the character of this manufacturing, commercial and residential village developed largely during the second half of the 19th century. The West Acton Historic District is one of three local historic districts established by the Town of Acton in 1990.

ESTABLISHING LOCAL HISTORIC DISTRICTS

MARCH 1994

MASSACHUSETTS HISTORICAL COMMISSION

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CHAPTER I

Local Historic Districts: An Overview

Introduction

In Massachusetts, local historic districts offer the strongest form of protection for the preservation of historic properties. This booklet is designed to help cities and towns through the process of establishing local historic districts in accordance with the provisions of Massachusetts General Laws, c. 40C, the Historic Districts Act. It is intended that communities will use this guide to assist in the establishment of local historic districts that not only meet the procedural requirements of state law, but more importantly recognize the unique characteristics of the historic resources, preservation needs and regulatory climate of each community in the Commonwealth.

History of Historic District Legislation

Local historic districts are one of the oldest and strongest forms of protection for historic properties. The historic district movement began in the United States in 1931, when the city of Charleston, South Carolina, enacted a local ordinance designating an "Old and Historic District" administered by a Board of Architectural Review. Following a 1936 amendment to the Louisiana Constitution, the Vieux Carré Commission was created in 1937 to protect and preserve the historic French Quarter in New Orleans. The regulations of these districts provided that no changes be made to the exterior architectural features of buildings, structures, and sites visible from a public street within the designated area without the review and approval by an historic district commission. These districts served as models for local protection of historic areas across the country.

Massachusetts first made use of this preservation tool in 1955. Following opinions rendered to the General Court by the Massachusetts Supreme Judicial Court that held that these districts were constitutional, Special Acts of the Legislature creating the Beacon Hill District in Boston and the Historic District in Nantucket were passed. Special Act Districts in Lexington and Concord were established between 1956 and 1960.

In 1960, a statewide enabling statute was enacted to empower municipalities to establish local historic districts. The Historic Districts Act, G.L. c. 40C, was created to protect and preserve the historic resources of the Commonwealth through a local review system that encourages and ensures compatible maintenance, improvement, and development. The Historic Districts Act was

substantially amended in 1971, with minor language changes made in 1983 and 1987.

Despite the need for changes over the years, the Historic Districts Act has proven to be remarkably enduring, and has served Massachusetts' communities well for over three decades. To date over 100 communities across the Commonwealth have enacted local historic districts to protect their historic resources and ensure the preservation of their community character.

Purpose of Historic Districts

Local historic districts have three major purposes as stated in G.L. c. 40C:

- to preserve and protect the distinctive characteristics of buildings and places significant in the history of the Commonwealth and its cities and towns;
- to maintain and improve the settings of those buildings and places;
- to encourage new designs compatible with existing buildings in the district.

In many instances, local historic districts can be credited with saving the character of a neighborhood or town from otherwise certain destruction. The preservation through local historic districts of distinctive areas within a community can provide a city or town with a continuing sense of its past. It can limit the destruction of the historical and architectural legacies of our ancestors and provide an assurance that they may be enjoyed by future generations. To the public, an historic district offers a visual example of our historic and cultural heritage. To its residents, it affords a means of neighborhood conservation, contributes to the stabilization and revitalization of an area, and provides a way for the community to exercise control over its future.

An historic district may be established when a concentration of highly significant buildings exists, or when a group of buildings together form a distinct area in which the whole may be greater than the sum of its parts. Historic district controls are put in place to preserve the appearance of the area without changing ownership of the properties or curtailing their use. Since each building, structure, and place within such a district contributes to the overall historic character, changes made to the exterior of any property, as well as new construction, are reviewed for the impact they may have on the district as a whole.

Historic districts do not prevent changes from occurring, nor do they prevent new construction or development. The intent is to make changes and additions harmonious, and prevent the intrusion of incongruous elements that might detract from the aesthetic and historic values of the district. Historic district commissions may only review changes to exterior architectural features visible from a public way. The ordinance or bylaw creating the district may also exclude certain categories from review; most frequently paint color, storm windows and doors, and routine repairs are exempted. The purpose of a local historic district is not to halt growth, but to allow for thoughtful consideration of change. When properly established and administered, a local historic district is not unduly burdensome to property owners.

Legal Basis for Historic Districts

Because local historic districts have direct impact on property rights, the question of their legal basis and constitutionality often arises. Historic district controls exist within the broader context of land use regulations that have been extensively reviewed and examined by the courts.

The basic origin for historic preservation controls lies with the development of municipal land use and zoning controls in the early twentieth century. In 1926 the U.S. Supreme Court decision in *Village of Euclid v. Ambler Realty*, 272 U.S. 365 (1926), upheld the constitutionality of local zoning ordinances, and established the ability of municipalities to regulate land use through the exercise of their police powers.

As land use controls evolved, they eventually began to encompass aesthetic considerations and the desire of communities to protect and preserve the character of their historic and architectural resources. In 1954, the U.S. Supreme Court affirmed the constitutionality of "aesthetic" zoning in the case of *Berman v. Parker*, 348 U.S. 26 (1954). With the development of historic district controls, state judicial opinions supported the use of such regulation as a valid exercise of the state's powers to promote the general welfare.

It was not until 1978, when the U.S. Supreme Court decided *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978), that the constitutionality of local controls to further historic preservation was affirmed. In this landmark case the Court considered whether historic preservation controls constituted a "taking" in violation of the Constitution's Fifth Amendment which provides that private property shall not be taken for public use without just compensation. The Court found that historic preservation is a valid public purpose, and that the City of New York's landmark restrictions on Grand Central Station did not constitute a "taking" because the controls did not

prevent a reasonable economic use of the property.

Although the basic constitutionality of local historic preservation controls has been recognized by the courts, they are still subject to legal challenge, often involving the claim of "taking". However, unless the regulation is found not to advance a legitimate public interest, or the restrictions on designated property are so severe as to deprive the owner of any reasonable economic use, historic preservation controls will remain solidly within the broad spectrum of constitutional land use controls.

Local Historic Districts and National Register Districts

Although the same area may be designated as both a local historic district and a National Register District, there are substantial differences between the two designations. The National Register of Historic Places is a listing of buildings, structures, sites, objects, and districts significant in our nation's history, culture, architecture or archaeology and that are worthy of preservation. It is a Federal designation, administered by the Secretary of the Interior through the Massachusetts Historical Commission as the State Historic Preservation Office. Listing in the National Register provides formal recognition of the property's significance, tax incentives for owners of income-producing property, and limited protection from federally funded, licensed, or assisted projects. National Register listing in no way limits the owner's use of the property, and places absolutely no restrictions or conditions on changes made by a private property owner unless there is state or federal involvement in a project, or unless some other regional and/or local regulation is in effect. Nominations to the National Register are usually initiated by a property owner or by the local historical commission, and do not require any local government approval. Property owners have the right to object to listing on the National Register; a district will not be listed if the majority of owners object.

Both National Register Districts and Local Historic Districts are automatically listed on the *State Register of Historic Places*. This listing provides limited protection from adverse effects by state funded, licensed, or assisted projects, and makes properties owned by municipalities or non-profit organizations eligible for grants from the Massachusetts Preservation Projects Fund when available.

Local Historic Districts and Zoning

Historic district legislation in Massachusetts exists separately from the state zoning enabling legislation (G.L. c. 40A). Historic districts do not regulate the use of property. Local zoning ordinances and bylaws provide regulations governing both the use and the development of land. Typically, zoning controls will specify permitted uses (residential, commercial, industrial, etc.), maximum building size, lot dimensions and set-backs, parking standards, and other requirements for development in the community.

Properties located in historic districts are also subject to the provisions of local zoning regulations. Therefore, it is important to recognize the relationship between a local historic district and local zoning controls, and to make sure that the two are compatible.

Problems arise when there is no coordination between historic districts and local zoning controls. The most typical conflicts involve allowable uses and dimensional controls which may conflict with the historic uses and development patterns traditionally associated with historic districts. To prevent routine conflicts from arising, it is important to carefully analyze existing zoning regulations in the community to determine their potential impacts on historic resources.

CHAPTER II

The Historic Districting Process

Establishing Local Historic Districts: A Step-by-Step Guide

The Historic Districts Act provides a specific procedure for the establishment of local historic districts in Massachusetts. The process outlined in the Historic Districts Act (G.L. c. 40C, Sections 3 and 4) must be followed for historic districts to be valid. The following steps constitute the historic districting process from initial recommendation to final establishment.

1. Recommending Local Historic Districts

The first step in the districting process is deciding on the appropriateness of local historic districting in the community. As previously noted, local historic districts are the strongest form of protection that can be given to historic properties. The establishment of a local historic district has considerable implications for the rights of property owners, so its establishment should not be approached casually. The recommendation of a local historic district should be the result of a comprehensive assessment of the community's historic resources, consideration of threats these resources may face, and a careful examination of appropriate strategies to address these threats.

Generally, local historic districts are proposed when significant historic resources are threatened by change that is unregulated or insensitive to the resources' historic character. While the establishment of local historic districts is perhaps the best known strategy to address such change, it is not the sole mechanism available to further historic preservation and protect community character. Other strategies including changes in local zoning and development policy, the implementation of facade, home improvement or other preservation incentive programs, targeted planning efforts, technical and design assistance, public investments, etc. can all contribute to the goal of furthering historic preservation and preserving community character. Careful consideration should be given to the appropriateness of any mechanism in addressing threats to historic resources. Ideally, the recommendation of a local historic district will be just one component of a much larger and more comprehensive strategy to ensure the preservation of historic resources and community character.

The identification and recommendation of areas for local historic districting is sometimes made as part of the community's ongoing process of surveying its

historic resources, through the development of a local preservation or master plan, or the findings of special planning or economic development studies. In most instances the recommendation to pursue the establishment of a local historic district evolves from the work of the local historical commission, which is responsible for community-wide historic preservation planning. The initiation of the formal districting process generally begins with a request from the local historical commission (in some communities a petition from residents or property owners has been utilized) to the board of selectmen or city council for the appointment of an historic district study committee.

The historic district study committee will be responsible for conducting an investigation of the justification and feasibility of establishing a local historic district, developing a report to present their findings and recommendations, and conducting a public hearing on the proposal prior to its consideration by town meeting or city council.

2. Establishing the Historic District Study Committee

Board of Selectmen or City Council Action The historic district study committee is established by majority vote of the board of selectmen or city council. Note however, that under the Historic Districts Act, these bodies are not *required* to appoint a study committee if requested to do so. If a local historic district has already been established in the community, the investigation, report and hearing may be carried out by the existing historic district commission (or by the combined historic district commissions if more than one exists), unless the existing commission(s) recommends otherwise. A sample vote to establish an historic district study committee follows:

VOTED: There is hereby established under the provisions of Chapter 40C, General Laws, an Historic District Study Committee consisting of ___ members, which shall make an investigation and report on the historic significance of the buildings, structures, features, sites or surroundings included in such historic district or districts as the committee may recommend, and shall submit a final report with its recommendations after a public hearing, together with a map of the proposed district or districts and a draft of the proposed ordinance (bylaw), to the City Council (Town Meeting).

Appointment of the Study Committee Three to seven members may serve on an historic district study committee. They are appointed in towns by the selectmen and in cities by the mayor or, where the city charter so requires, by the city manager. G.L. c. 40C, section 4 requires that where possible,

membership include nominees from the following organizations:

- the **local historical society**. If a community has no local historical society, the Society for the Preservation of New England Antiquities (141 Cambridge St., Boston, MA 02114) should be consulted for nominees.
- the **American Institute of Architects**. The chapter of the American Institute of Architects covering the area can be obtained from the Boston Society of Architects, (52 Broad St., Boston, MA 02109).
- the **Board of Realtors**. The Massachusetts Association of Realtors (256 Second Ave., P.O. Box 650, Waltham, MA 02154) can provide the address of the appropriate regional board.

Requests for nominees must be sent to these organizations by the selectmen or mayor. Each organization should submit two nominees. Nominees are not required to be from among the membership of the organizations nor to be residents of the community, but such membership and residency would normally be desirable. If any of the organizations fail to submit nominees within thirty days, appointments may be made without their representation.

A study committee can be most effective if its membership embraces a variety of organizations and individuals whose interests and concerns reflect those of the community. Besides those organizations specified in the Historic Districts Act, consideration should be given to the following:

Local Historical Commission Members
Architectural Historians
Historians
Landscape Architects
Lawyers
Residents or Property Owners in potential districts
Business Owners and Chamber of Commerce Members
Public Relations Professionals
Planning Board Members
Conservation Commission Members
Real Estate Professionals
Building Contractors or Tradespersons

Organizing the Study Committee Once all the members of the committee have been appointed and sworn in by the municipal clerk, the first meeting should be called by the selectmen, mayor or the first person named on the list

of appointees. If all of the appointees are present, the committee can organize on a permanent basis, and a chairperson and secretary or clerk, should be elected. Otherwise, temporary officers should be elected. Notice of all future meetings should be given by the secretary, who will also be responsible for record-keeping. Names of the members of the committee and its officers should be given to the municipal clerk and sent to the Massachusetts Historical Commission.

Meetings of the study committee should follow normal procedures, including maintaining a quorum, keeping accurate minutes and records, and ensuring orderly discussion and public comment. Adequate prior notice of meetings must be given to comply with due process requirements. The Massachusetts Open Meeting Law (Chapter 39, Sections 23 A-C) requires committees and commissions to hold open meetings, notice of which must be filed with the municipal clerk and posted in the city or town hall at least 48 hours in advance. Open ballots or roll calls are required and must be reported in the minutes. If a closed (executive) session is needed, for a purpose authorized in the Open Meeting Law, the committee or commission must first meet in an open, posted session and a majority of the members must vote by roll call to go into executive session.

Once the organization and operating procedures of the study committee have been established it is then ready to begin its work. At this point the study committee should review its charge (often, as part of the order establishing the committee, it will have been given a specific mandate, for example investigating the establishment of a local historic district in a specific area of the community). Also at this time, the study committee is strongly encouraged to contact the Massachusetts Historical Commission. MHC staff is available to meet with the study committee to review the historic districting process and provide materials to aid the committee's work. The MHC can also provide the study committee with contacts to historic district commissions and study committees in other communities that may be able to provide additional guidance based on their experiences.

3. Building Support for Local Historic Districts

Community understanding and support of local historic districts is crucial to successful efforts to establish them. One of the most common reasons for the defeat of local historic district proposals is opposition resulting from public misconceptions about historic districts. The MHC strongly encourages historic district study committees begin public information activities early on in the districting process.

Once the study committee has been organized, immediate consideration should be given to the development of strategies to inform and educate the public and build political support. A wide range of individuals and groups should be targeted for educational efforts, to provide an opportunity for public input in the districting process, and to solicit additional support for district establishment. Groups to consider include:

- members of Boards of Selectmen and City Councils
- municipal officials or department heads
- chambers of commerce/local business representatives
- neighborhood organizations
- civic groups
- realtors
- educators and schoolchildren
- media (newspapers, radio, television, local cable access)
- private preservation organizations

The study committee should develop a variety of educational and promotional techniques that meet particular needs of the community and the specifics of the district being proposed. Press releases, fact sheets, neighborhood informational meetings, walking tours, lectures and slide presentations are just a few examples of public information and educational efforts that can be used to familiarize the public, both within and outside the proposed districts, with the purpose of historic district designation and the restrictions and protection involved.

The study committee may also wish to conduct a poll of residents and property owners in the proposed district. This will provide not only an indication of how the district would be accepted, but a chance to tailor the provisions of the district bylaw or ordinance to the needs and desires of the community. The poll should explain districting options and ask for opinions on how restrictive or lenient the district should be. If there is opposition to the idea of an historic district, it is a good indication that more public education is needed *before* the district goes to a vote. If the poll indicates strong support for the district among the people who would be most affected by it, it will help to convince members of the city council or town meeting to vote favorably.

Samples of informational materials and resident/property owner polls are available from the Massachusetts Historical Commission.

4. The Historic Properties Survey

The Historic Districts Act requires the study committee to make an investigation of buildings, structures, sites, and areas of architectural and historical significance. The local historic properties survey provides the basis of this study. In many communities, this work has already been done substantially or in part by the local historical commission. It is strongly recommended that the study committee meet with the local historical commission and staff of the Massachusetts Historical Commission early on in the study process to assess survey needs as they relate to the establishment of a local historic district.

MHC recommends that a comprehensive community survey be completed prior to establishing local historic districts, so that the proposed district's significance can be placed in a community-wide context. However, it is sometimes necessary to proceed with protective measures before all of the identification and evaluation has been completed. In such cases, it is important to complete inventory forms for all of the properties within the proposed historic district. A completed survey greatly facilitates the work of the study committee and the historic district commission that is eventually appointed. The completed inventory forms provide the study committee with the background information necessary to establish the district's significance and to delineate and justify its boundaries. In addition, the information on completed inventory forms -- architectural descriptions, historical narratives, and exterior photographs, will assist the historic district commission in carrying out its design review authority.

MHC strongly recommends that MHC inventory forms for all properties (both historic and modern) to be included in local historic districts be fully completed to current survey standards, so that both the study committee and the historic district commission have a strong basis for justifying decisions involving properties in the historic district. In many instances inventory forms may have already been completed as part of previous survey efforts in the community. The study committee should review existing forms to see that they are complete and meet current MHC survey standards. Existing photographs should also be reviewed to see that they accurately reflect current building conditions. Existing forms may be updated or completed using MHC inventory forms and continuation sheets.

The study committee should be fully aware of the current standards for inventory outlined in detail in MHC's *Historic Properties Survey Manual: Guidelines for the Identification of Historic and Archaeological Resources in Massachusetts*. This publication provides guidelines and recommendations for organizing and conducting a comprehensive survey, and instructions for

completing inventory forms. Additional assistance is available from the staff of MHC's Preservation Planning Division.

5. Evaluating Historic Districts

Selection of Districts The historic properties survey is used to select areas for historic district establishment and to assess their significance. Concentrations or areas of significant buildings or structures identified in the survey may be potential historic districts. The study committee should determine whether historic districting offers the most suitable protection for these areas, and if so, the order in which these areas should be proposed for historic districting. Priority may be determined according to the relative significance of each area, the need for protection and other factors.

Single Building Districts In some instances it may be necessary or desirable to protect buildings, structures, or sites which are isolated in terms of their setting. Examples include houses or farmsteads in rural areas, or significant buildings which may be surrounded by contemporary development or significantly altered properties. Although the Historic Districts Act does not make reference to the designation of individual properties as protected "landmarks," Section 3 of the Act does provide that proposed historic districts *"...may consist of one or more parcels or lots of land, or one or more buildings or structures on one or more parcels or lots of land."* This provision allows communities to establish single building districts. When possible however, it is generally more desirable to protect the character of a larger surrounding area, thereby protecting the district's historic setting in addition to individual historic resources. In areas where a larger historic district is feasible, there should be clear justification for the establishment of single building designations. As a general rule, the MHC recommends that properties proposed for single building district designation should be individually eligible for listing in the National Register of Historic Places. MHC staff can assist study committees by evaluating the National Register eligibility of properties proposed for single building district designation.

Selection of Boundaries The establishment of local historic district boundaries involves the consideration of a number of combined factors. These factors may include historical significance or associations, settlement or development patterns, past or present land use, architectural styles, significance, or integrity, topography, natural and built features, property or other surveyed lines, or any combination of these factors. In delineating boundaries of historic districts the study committee should consider how the buildings and structures on the edges of the district either contribute to its character or setting, or detract from it, because of incongruity of style, mass, use or condition. Finally, the study committee should keep in mind the degree to which properties proposed for

inclusion in the district are visible from the public way, as the district's jurisdiction will be limited to these features. Boundaries that give the district the greatest justifiable protection should be proposed.

Types of Boundaries The boundaries of an historic district should be clear and readily discernable. In planning district boundaries it is strongly advised that the study committee use local assessors or similarly accurate planning maps as a basis for decision making. Various types of boundaries may be used by the study committee. These include natural boundaries such as bodies of water; built features such as streets and roads, and surveyed lines or lines of convenience such as property lines, and uniform measured set-backs. Any one or all of these types may be used to define historic district boundaries.

In cities and other developed areas, surveyed lot lines are convenient and desirable boundaries. In more rural areas where lots are often deep, natural boundaries or a measured set-back from the road may be more appropriate. When using a measured set-back, the point of measurement should be carefully considered and specified since the position of roads may change as they are widened or straightened. The set-back must be wide enough to include property which is visible from the public way and which has exterior architectural features that contribute to the character of the district. When establishing districts it is important to avoid boundaries which bisect or only partially include buildings or other structures.

Historic district boundaries should also be drawn to include the streets, roads and other public rights of way located between the parcels to be included in the district. Future work or construction that may take place in these areas may have a major impact on the character of the district, and should come under the jurisdiction of the historic district commission. In general, district boundaries should provide not only for the protection of individual historic resources, but for their settings as well.

Open Space Open space may be included within the historic district boundaries if it is historically justifiable. In many instances it is desirable to include open space to maintain the setting of the district. However, because local historic district controls do not regulate land use, additional controls such as agricultural restrictions, conservation easements, or open space zoning may be necessary to preserve large tracts of open space.

Intrusions Contemporary structures, historic properties which have been severely altered, or other intrusions may also be included within the boundaries of historic districts. Very few districts have no intrusions within their boundaries. When such intrusions are widely scattered within a district, it is generally not necessary or desirable to attempt to draw boundaries that would

exclude them. In recommending boundaries, it is important to keep in mind that one of the stated purposes of the Historic Districts Act is to maintain and *improve* the setting of historic properties. Therefore individual properties or small areas which have been altered or otherwise lack integrity should not automatically be excluded from district boundaries.

6. Drafting the Historic District Ordinance or Bylaw

Local historic district ordinances and bylaws are the legal instrument for the creation and administration of local historic districts. They not only provide for the designation and protection of historic resources, but for the establishment of the district commission, and the adoption of basic procedures for administering the historic district. The Historic Districts Act is broadly written to allow communities great flexibility in developing local historic district bylaws and ordinances. It also allows specific exemptions to district jurisdiction that permit the local bylaw or ordinance to be fitted to the particular circumstance of each community. The study committee is strongly encouraged to work with its municipal legal counsel in drafting and reviewing the proposed historic district ordinance or bylaw prior to city council or town meeting consideration.

In general, the MHC recommends that historic district ordinances and bylaws be as explicit as possible, incorporating language from the Historic Districts Act where appropriate. Generally, the more explicit an ordinance or bylaw is, the more useful it will be to both the historic district commission and the applicants who come before it. Including sufficient language in the local ordinance or bylaw will also help reduce the necessity of referring back to G.L. c. 40C, the structure of which can make it somewhat difficult to use. While historic district ordinances and bylaws must be drafted to meet the individual needs and desires of each community, at a minimum the ordinance or by-law should contain the following provisions:

Title How the ordinance or bylaw will be formally known and cited.

Authority Stating the enactment of the historic district ordinance or bylaw is pursuant to the authority of G.L. c. 40C, the Historic Districts Act.

Purpose A general purpose statement declaring the reasons for the establishment of the district similar to G.L. c. 40C, Section 2.

Definitions Definitions commonly used in the ordinance or bylaw, at a minimum including those provided in G.L. c. 40C, Section 5.

Establishment of District(s) A description of the boundaries of the proposed district(s) containing sufficient detail to accurately outline the geographical bounds of the district, *or* a specific reference to a plan or map showing the boundaries. The map or plan may be appended to the ordinance or bylaw, or noted that it is on file with the municipal clerk.

Establishment of Commission The number of regular and alternate commission members, their nominating organizations, membership terms and provisions for vacancies and appointment of officers; in accordance with the requirements set forth in G.L. c. 40C, Section 4.

Commission Powers and Duties The power of the historic district commission to administer and regulate the historic district in accordance with the procedures and criteria further established in the ordinance or bylaw. In addition this section *may* include:

1. A statement declaring the ability of the commission to adopt and amend rules and regulations, not inconsistent with the provisions of the Historic Districts Act, for the conduct of its business pursuant to G.L. c. 40C, Section 10(e).
2. A statement outlining the authority of the commission to employ clerical and technical assistants, incur expenses, accept monetary gifts or administer real estate interest on behalf of the municipality pursuant to G.L. c. 40C, Section 10(h).
3. Powers, authority and duties delegated or assigned by vote of the municipality in addition to those granted by G.L. c. 40C, pursuant to G.L. c. 40C, Section 10(i).
4. A statement delegating to the commission the powers and duties of a local historical commission under G.L. c. 40, Section 8d, pursuant to municipality vote as provided for in G.L. c. 40C, Section 14.

Commission Jurisdiction Requiring commission review and approval of alterations and construction that affects exterior architectural features as outlined in G.L. Ch. 40C, Section 6.

Exemptions A list of the categories excluded from review by the commission pursuant to the options provided in G.L. c. 40C, Section 8, and the limitations to commission review as outlined in Section 9. It is recommended that walls, fences, lighting fixtures, antennae and

sidewalks not be excluded from the review of the commission given their potential impact on the historical and architectural elements of the historic district. Any limitation to the commission's review authority should be carefully examined in light of the unique characteristics of the historic district and its potential detrimental effect upon its resources and character.

Procedures for Review of Applications A description of the review process including types of certificates to be issued, applications, initial determination, public hearing, notification required, commission decisions, applicable time frames, etc. as provided for under G.L. c. 40C, Sections 10 and 11.

Criteria for Commission Decisions The criteria the commission will use in determining the appropriateness of applications as outlined in G.L. c. 40C Section 7.

Appeal This section *may* include an intermediate appeal provision designating a person or persons chosen by the regional planning agency of which the municipality is a member, to conduct a review process in lieu of a direct appeal to Superior Court as provided under G.L. c. 40C, Section 12. The initial non-judicial appellate process is more time and cost efficient than an appeal to Superior Court and may allow resolution in more amiable terms. In absence of this optional provision, appeals are brought directly to Superior Court pursuant to G.L. c. 40C, Section 12A.

Enforcement A statement noting the jurisdiction of Superior Court in the appropriate county to enforce the provisions of the ordinance or bylaw and impose fines for violations as provided for in G.L. c. 40C, Section 14. Provisions for a "ticketing" procedure under an existing municipal non-criminal disposition ordinance or bylaw may also be included if desired. However, the adequacy of such a provision as an exclusive remedy for violations should be carefully considered.

Severability A statement deeming the provisions of the document severable similar to the language found in G.L. c. 40C, Section 17.

Note: In communities with demolition delay ordinances or bylaws, it is desirable to exclude properties within designated local historic districts from consideration under the provisions of the demolition delay review.

Because local historic district commissions have the ability to *prohibit* the

demolition of properties within the boundaries of the local historic district, it is unnecessary, and generally inadvisable to include local historic districts within the operation of a demolition delay ordinance or bylaw. At the time the local historic district is enacted, the MHC recommends that the demolition delay ordinance or bylaw be amended to include a statement that if any provision of the demolition delay ordinance or bylaw conflicts with G.L. c. 40C, the Historic Districts Act, that act shall take precedence.

Sample historic district ordinances and bylaws are available from the Massachusetts Historical Commission.

7. Preparing the Preliminary Report

The findings of the study committee are to be presented in the form of a preliminary report. In preparing the preliminary report, the study committee should develop a statement of purpose, articulating the reasons for preserving historic resources in their community. The preliminary report will not only present the study committee's findings to the public, but will also inform them of what an historic district is and justify the proposed protective measures. The report should be viewed as both a legal document providing justification for the district's establishment and a source of public information about the district proposal.

The preliminary report should contain the following sections:

Introduction: An explanation of what an historic district is, why it is appropriate, and how it will benefit the community.

Methodology: A discussion of how the study committee chose the area(s) under consideration, how the historic resource inventory was utilized, and what threats and/or opportunities are addressed by the establishment of the historic district.

Significance: This section should provide a clear and concise discussion of the proposed district in terms of its significance and why it is worthy of preservation. This discussion should describe how the proposed historic district(s) is:

importantly associated with one or more historic persons or events, or with the broad architectural, aesthetic, cultural, political, economic or social history of the community or Massachusetts, *and/or*;

historically or architecturally significant (in terms of period, style, method of construction, or association with an important architect or builder).

The discussion of the district's architectural and historical significance may also include a description of the overall character of the area, its built and natural environment, noting the district's important individual properties, landscape characteristics, settings, etc.

Justification of Boundaries: The boundaries can be justified on the basis of historical development patterns, natural features, architectural congruity, land use patterns, or a combination of any of these factors and others. This section should also note any intrusions or incongruous elements that do not contribute to the significance or character of the district.

Options and Recommendations for the Bylaw or Ordinance: This should include a discussion of the options afforded under Chapter 40C for membership of the district commission, exclusion of certain categories from review, and appeal procedures. Recommendations should be made based upon the particular circumstances of the area under consideration and the community in general.

Maps: A map clearly showing the proposed boundaries of the district. An assessors map or similarly accurate map should be used for this purpose. In addition, a map showing the location of the district within the city or town may also be helpful.

Property Index: All properties to be included in the proposed district should be listed by street address and MHC inventory form number, (if applicable). For local reference the index should also include assessor's or other local numbers. The study committee may also wish to include other information in the index such as architectural style, integrity, date of construction, etc.

Note: The creation of a complete property index for the district will greatly assist in the district's future administration. A copy of the list should be provided to the building department to assist them in readily determining which requests for permits should first be referred to the historic district commission for review.

Ordinance or bylaw: A draft of the proposed ordinance or bylaw.

For submittal of the report to the MHC, the following should also be included :

Completed Inventory Forms: Original inventory forms (with photographs) for any additional resources documented as part of the districting process, or continuation sheets (with additional or updated information) for existing inventory forms already on file with the MHC.

Slides: Slides showing the general setting of the district and a sample of the district's significant individual properties are desirable. These together with inventory forms will be useful to assist the Massachusetts Historical Commission in reviewing the district proposal.

Samples of preliminary reports are available from the Massachusetts Historical Commission.

8. Submitting the Preliminary Report

G.L. c. 40C requires that the study committee submit copies of the preliminary report to the local Planning Board and to the Massachusetts Historical Commission for their consideration and recommendations. Copies should also be made available locally (city or town hall, planning board office, library, etc.) for public review and comment.

The preliminary report submitted to the Massachusetts Historical Commission should be accompanied by a cover letter, signed by the study committee chairperson. The preliminary report should be delivered by hand or by certified mail. Upon receipt of these materials, the Massachusetts Historical Commission will date-stamp the cover letter and return a copy to the study committee for its files as evidence of the report's submittal to the MHC.

The staff of the Massachusetts Historical Commission will review the preliminary report, and present it to Commission members for their comments. The MHC meets on a monthly basis, local historic district reports are scheduled for consideration at the next possible meeting. The MHC serves in an advisory capacity only, and will vote on the approval of the preliminary report and endorsement of the district proposal. Once the MHC has voted, their actions and comments will be relayed to the study committee.

9. The Public Hearing

At least sixty days *after* the preliminary report has been received by the Planning Board and the Massachusetts Historical Commission, the study committee must hold a public hearing on the proposed district. At least fourteen days before the scheduled date of the public hearing, all owners of property in the proposed district must be given written notice of the hearing. The notice should be sent to the owner of record according to the most recent list maintained by the local board of assessors, not to "occupant". Property owners should also receive a copy of the preliminary report or information on where one may be obtained or reviewed. At the same time, notice of the hearing should also be published in a newspaper of general circulation in the city or town, given to the municipal clerk and municipal officials, and posted at the city or town hall.

The study committee should be prepared to answer questions about the districting process, the architectural and historical significance of the area proposed for designation, and the provisions of the proposed historic district ordinance or bylaw. It should be expected that opponents of the local historic district proposal will attend the public hearing, therefore it is extremely important to have supporters of the proposal prepared to testify at the hearing. By the time the public hearing is held, the study committee must be knowledgeable about the proposal, the benefits of local historic districts, and be prepared to counter organized or vocal opposition. As a rule, the MHC does not attend public hearings for local historic districts, however, the MHC staff is available to assist study committees in preparing for the hearing.

10. Preparing the Final Report

Following the public hearing, the study committee will prepare a final report, incorporating comments and recommendations from the Planning Board, MHC, and the community. The final report may be substantially the same as the preliminary report, or may be modified based on response to the report. The final report must be accompanied by a map of the proposed district, suitable for recording, and a copy of the proposed bylaw or ordinance (prepared with the assistance of city or town legal counsel).

The final report is then submitted for consideration by the city council or town meeting. The proposed ordinance or bylaw establishing the historic district and the historic district commission is the component of the final report formally voted upon by the town meeting or city council. The study committee should check with the municipal clerk to determine the procedure for getting the ordinance on the city council calendar or the bylaw on the warrant for town

meeting. Towns will be required to submit a copy of the final report and bylaw to the State Attorney General's office for review if the district is adopted. A copy of the final report should also be sent to the Massachusetts Historical Commission.

11. Voting on the Historic District Proposal

The ordinance or bylaw establishing a local historic district must be adopted by a two-thirds vote of the city council or town meeting. For communities with open town meetings (especially those which may convene for several days) it is important to keep close track of when the historic district proposal is likely to come up for consideration, and to assure that the proposal's supporters are in attendance at that time. The study committee should also be prepared to make a final presentation on the proposal or answer any questions that may arise during town meeting or city council consideration. The MHC should be informed promptly of the result of the vote.

12. Enactment of the Historic District Ordinance or Bylaw

Towns

Before the bylaw takes effect it must be approved by the Attorney General. Within thirty days of the adoption of a local historic district bylaw by town meeting, the town clerk must send to the Attorney General certified copies of the preliminary report, evidence that the report was submitted to the MHC and to the town's planning board, the notice of public hearing, and the final report containing the committee's recommendations, a map of the proposed district, and the proposed bylaw. The materials which must be submitted to the Attorney General are further outlined on the Attorney General's bylaw submittal forms for historic districts.

If the town clerk fails to submit such materials within thirty days, the selectmen, within fifteen days thereafter, may comply with the required procedure. The Attorney General must take action within ninety days of submission; if that period elapses without such action, the bylaw may be assumed to have the Attorney General's approval.

In addition, the bylaw must be published in a town bulletin or pamphlet, with copies posted in at least five public places (if the town is divided into precincts, copies must be posted in at least one public place in each precinct). Alternatively, the bylaw may be published a minimum of two times, at least one week apart, in a newspaper of general circulation in the town.

The effective date of the historic district bylaw is the date of approval by the Attorney General or ninety days after submission of the request to the Attorney General if no response is received. The town clerk should enter this information into the town records.

Cities

The ordinance creating an historic district in a city will become effective when the procedural requirements provided by local ordinance and in G.L. c. 43, Section 55 are met.

13. Recording the Historic District Map

No ordinance or bylaw creating an historic district will become effective until a map showing the boundaries of the district is filed with the municipal clerk and is recorded in the Registry of Deeds for the county or district in which the city or town is located.

Maps of historic districts established under G.L. c. 40C do *not* have to comply with rules and regulations which may be established by Registers of Deeds under G.L. c. 36, Section 13a, pertaining to the format requirements of maps accepted for recording. However, where such formatting requirements do exist, it is a good idea to follow the regulations as closely as possible to ensure the archival preservation of data on the historic district. The study committee should contact the appropriate Registry of Deeds for guidance before preparing final maps of the historic district(s), as other requirements such as filing fees, the submission of a district property index, etc. may also apply.

14. Appointing The Historic District Commission

Three to seven members serve on an Historic District Commission. Members are appointed by the selectmen in a town, and by the mayor or city manager in a city.

Required Membership The Historic Districts Act requires that, where possible, the historic district commission include nominees from the *local historical society*, the *American Institute of Architects*, and the *Board of Realtors*. The same procedure used in soliciting nominees for the study committee should be followed for the historic district commission. In addition to the above requirements, the historic district commission must include one or more residents or property owners in the historic district, unless the preliminary

report recommends otherwise due to the small number of property owners or residents and the bylaw or ordinance so provides.

Additional Membership As with the study committee, it is recommended that additional members with professional expertise or individuals with interest, competence or knowledge in historic preservation be sought for membership.

Appointment Terms The terms of the initial appointments should be staggered, with one-third of the appointments made for one year, one-third for two years, and one-third for three years. G.L. c. 40C contains no limitation on the number of consecutive terms that may be served.

Alternate Members The ordinance or bylaw may also provide for the appointment of alternate members, not to exceed the number of principal members. Alternate members should have a demonstrated interest, competence or knowledge in historic preservation. If the historic district commission is small, it is advisable to appoint alternate members in order to insure a quorum.

Conflict of Interest Members of the historic district commission are subject to the state conflict of interest law, G.L. c. 268A, which requires that if any commission member is to hold a city or town job or to have indirectly a financial interest in any contract with the city or town, classification of the member by the city council, aldermen or selectmen as "special municipal employee" should be obtained and disclosure statements and other requirements met.

15. Notice of Historic District Establishment

Following approval of an historic district by a city or town, notice of the establishment of the district, along with a copy of the bylaw or ordinance as enacted and a final map of the district boundaries, must be sent to the Massachusetts Historical Commission. Local historic districts are automatically listed on the *State Register of Historic Places*. However, the additional protection afforded by *State Register* listing will not go into effect until the district is actually placed on the register by the MHC, therefore it is extremely important to notify the MHC of the district's final establishment.

Amending Existing Districts, Establishing Additional Districts, and Amending District Ordinances and Bylaws

Once established, local historic districts may be expanded or reduced in size. Any changes involving the boundaries of an historic district must follow the procedures for the initial establishment of a local historic district. In such cases, the historic district commission having jurisdiction over the historic district being amended is responsible for conducting the study, drafting the preliminary study report, and holding the public hearing.

When an additional district is to be created, the existing historic district commission, or commissions acting jointly, is responsible for conducting the study, drafting the preliminary report and holding the public hearing. The existing historic district commission or commissions may however recommend that a separate study committee be appointed for this purpose.

Historic district ordinances and bylaws may also be amended, by a 2/3 vote of city council or town meeting, as long as the amendment is not inconsistent with the intent of G.L. c. 40C. Before the amendment may be brought to a vote, the amendment must first be submitted to the historic district commission having jurisdiction over the district, for its formal recommendation. The historic district commission has a maximum of 60 days to make its recommendation on a proposed amendment, after which time the amendment may be acted upon by the city council or town meeting.

Converting Special Act Historic Districts to Chapter 40C

Most local historic districts in Massachusetts operate with ordinances and bylaws created under the authority of G.L. c. 40C. However some communities in Massachusetts have local historic districts which were established pursuant to a special law or act of the state legislature.

G.L. c. 40C provides a variety of advantages which may not be present in historic districts established through special legislation. Historic Districts enacted pursuant to G.L. c. 40C possess a sound procedural and substantive base. The review process under G.L. c. 40C provides protective measures which are generally more comprehensive than those found under special laws. Also, because G.L. c. 40C is a statewide enabling statute, favorable legal precedent and legislative initiatives to improve and strengthen the operation of the Historic Districts Act will directly benefit local historic districts created under it. Lastly, local historic district commissions, operating under the authority of the G.L. c. 40C, have a state-wide network of commissions who

operate under a shared legislative framework, and can provide legal, technical, and practical information and advice.

For these reasons some communities may wish to convert their historic districts created under special law to G.L. c. 40C by accepting its provisions. To do so the historic district commission having jurisdiction over the district should recommend the conversion to the city council or town meeting and obtain their 2/3 vote. The validity of the historic district under special law will not be affected, and all previous decisions will remain valid.

Further Reading

A Guide to Delineating Edges of Historic Districts. Russell Wright. Washington, D.C.: The Preservation Press, 1976.

A Handbook on Historic Preservation Law. Christopher Duerksen, editor. Washington, D.C.: The Preservation Press, 1983.

Historic Properties Survey Manual: Guidelines for the Identification of Historic and Archaeological Resources in Massachusetts. Boston: Massachusetts Historical Commission, 1992.

The Impacts of Historic District Designation: Planning and Policy Implications. Journal of the American Planning Association, Vol. 57, No. 3 (Summer 1991). Dennis E. Gale. Washington, D.C.: American Planning Association, 1991.

Maintaining Community Character: How to Establish a Local Historic District. Information Series No. 58. Pratt Cassity. Washington, D.C.: National Trust for Historic Preservation, 1992.

Zoning and Historic Preservation. Local Preservation. Stephen A. Morris. Washington, D.C.: National Park Service, U.S. Department of the Interior, 1989.

Contacts for Further Information

American Planning Association
1313 East 60th Street
Chicago, IL 60637
(312) 955-9100

Massachusetts Historical Commission
80 Boylston Street
Suite 310
Boston, MA 02116-4802
(617) 727-8470

National Alliance of Preservation Commissions
c/o School of Environmental Design
609 Caldwell Hall
University of Georgia
Athens, GA 30620
(706) 542-4731

National Center for Preservation Law
1333 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036
(202) 338-0392

National Park Service
Interagency Resources Division
P.O. Box 37127
Washington, D.C. 20013-7127
(202) 343-9595

National Trust for Historic Preservation
1785 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 673-4000

APPENDIX

CHAPTER 40C.

HISTORIC DISTRICTS.

| Section | Section |
|---|--|
| 1. Citation. | 9. Maintenance and repair, etc. |
| 2. Purpose. | 10. Additional powers, functions and duties of commission. |
| 3. Establishment of historic districts; pre-requisites; enlargement or reduction of boundaries; amendment of creating ordinance; filing of maps. | 11. Approval or disapproval of exterior architectural features by commission; meetings; applications for certificates; public hearings; notices. |
| 4. Study committees; commissions; establishment; membership; terms; vacancies; compensation; officers. | 12. Review procedure provided by local ordinance or by-law. |
| 5. Definitions. | 12A. Appeal to superior court. |
| 6. Certificates of appropriateness, non-applicability or hardship; necessity; applications and plans, etc.; building and demolition permits restricted. | 13. Jurisdiction of superior court; penalty. |
| 7. Factors to be considered by commission. | 14. Powers and duties of commissions established hereunder as historical commissions. |
| 8. Review authority of commission over certain categories of buildings, structures or exterior architectural features limited; authorization. | 15. Filing of ordinances, maps, reports, etc. |
| | 16. Special historic districts; acceptance and effect of this chapter. |
| | 17. Severability. |

40C:1. Citation.

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| Section 1. This chapter shall be known and may be cited as the | 1 |
| Historic Districts Act. | 2 |

40C:2. Purpose.

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| Section 2. The purpose of this chapter is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the commonwealth and its cities and towns or their architecture, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith. | 1 |
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40C:3. Establishment of historic districts; pre-requisites; enlargement or reduction of boundaries; amendment of creating ordinance; filing of maps.

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| Section 3. A city or town may, by ordinance or by-law adopted by two-thirds vote of the city council in a city or by a two-thirds vote of a town meeting in a town, establish historic districts subject to the following provisions:— Prior to the establishment of any historic district in a city or town an investigation and report on the historical and architectural significance of the buildings, structures or sites to be included in the proposed historic district or districts shall be made by an historic district study committee or by an historic district commission, as provided in this section and in section four, who shall transmit copies of the report to the planning board, if any, of the city | 1 |
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or town, and to the Massachusetts historical commission for their
 respective consideration and recommendations. The buildings, struc-
 tures or sites to be included in the proposed historic district may
 consist of one or more parcels or lots of land, or one or more buildings
 or structures on one or more parcels or lots of land. The Massachu-
 setts historical commission may consult with the executive director of
 the Massachusetts office of business development, the secretary of
 communities and development and the commissioner of environmental
 management with respect to such reports, and may make guidelines
 for such reports, and, after public hearing, establish rules as to their
 form and manner of transmission. Not less than sixty days after such
 transmittal the study committee shall hold a public hearing on the
 report after due notice given at least fourteen days prior to the date
 thereof, which shall include a written notice mailed postage prepaid,
 to the owners as they appear on the most recent real estate tax list of
 the board of assessors of all properties to be included in such district
 or districts. The committee shall submit a final report with its recom-
 mendations, a map of the proposed district or districts and a draft of a
 proposed ordinance or by-law, to the city council or town meeting.

An historic district may be enlarged or reduced or an additional
 historic district in a city or town created in the manner provided for
 creation of the initial district, except that (a) in the case of the
 enlargement or reduction of an existing historic district the investiga-
 tion, report and hearing shall be by the historic district commission
 having jurisdiction over such historic district instead of by a study
 committee; (b) in the case of creation of an additional historic district
 the investigation, report and hearing shall be by the historic district
 commission of the city or town, or by the historic district commissions
 acting jointly if there be more than one, instead of by a study
 committee unless the commission or commissions recommend other-
 wise; and (c) if the district is to be reduced written notice as above
 provided of the commission's hearing on the proposal shall be given to
 said owners of each property in the district.

Any ordinance or by-law creating an historic district may, from time
 to time, be amended in any manner not inconsistent with the provi-
 sions of this chapter by a two-thirds vote of the city council in a city
 or by a two-thirds vote of a town meeting in a town, provided that the
 substance of such amendment has first been submitted to the historic
 district commission having jurisdiction over such district for its recom-
 mendation and its recommendation has been received or sixty days
 have elapsed without such recommendation.

No ordinance or by-law creating an historic district, or changing the
 boundaries of an historic district, shall become effective until a map
 or maps setting forth the boundaries of the historic district, or the
 change in the boundaries thereof, has been filed with the city clerk or

town clerk and has been recorded in the registry of deeds for the 56
 county or district in which the city or town is located, and the 57
 provisions of section thirteen A of chapter thirty-six shall not apply. 58

40C:4. Study committees; commissions; establishment; membership; terms; vacancies; compensation; officers.

Section 4. An historic district study committee may be established 1
 in any city or town by vote of the city council or board of selectmen 2
 for the purpose of making an investigation of the desirability of 3
 establishing an historic district or districts therein. The study commit- 4
 tee shall consist of not less than three nor more than seven members 5
 appointed in a city by the mayor, subject to confirmation by the city 6
 council, or in a town by the board of selectmen, including one member 7
 from two nominees submitted by the local historical society or, in the 8
 absence thereof, by the Society for the Preservation of New England 9
 Antiquities, one member from two nominees submitted by the chapter 10
 of the American Institute of Architects covering the area, and one 11
 member from two nominees of the board of realtors, if any, covering 12
 the area. If within thirty days after submission of a written request 13
 for nominees to any of the organizations herein named no such 14
 nominations have been made the appointing body may proceed to 15
 appoint the study committee without nominations by such organiza- 16
 tion. 17

Whenever an historic district is established as provided in section 18
 three an historic district commission shall be established which shall 19
 consist of not less than three nor more than seven members. An 20
 historic district commission shall be appointed in a city by the mayor, 21
 subject to confirmation by the city council, or in a town by the board 22
 of selectmen, in the same manner as an historic district study commit- 23
 tee unless (a) the report recommending its establishment recommends 24
 alternate or additional organizations to submit nominees for member- 25
 ship and states reasons why such alternate or additional organizations 26
 would be appropriate or more appropriate for the particular city or 27
 town, the Massachusetts historical commission does not recommend 28
 otherwise prior to the public hearing on the establishment of the 29
 district, and the ordinance or by-law so provides; or (b) there is an 30
 existing historic district commission in the city or town which the 31
 report recommends should administer the new district, and the ordi- 32
 nance or by-law so provides. Unless the report recommends otherwise 33
 on account of the small number of residents or individual property 34
 owners, and the ordinance or by-law so provides, the members of the 35
 historic district commission shall include one or more residents of or 36
 owners of property in an historic district to be administered by the 37
 commission. If within thirty days after submission of a written 38
 request for nominees to an organization entitled to submit nomina- 39
 tions for membership on the commission no such nominations have 40
 been made the appointing body may proceed to make the appointment 41

to the commission without nomination by such organization. The
 appointments to membership in the commission shall be so arranged
 that the term of at least one member will expire each year, and their
 successors shall be appointed in the same manner as the original
 appointment for terms of three years. Vacancies shall be filled in the
 same manner as the original appointment for the unexpired term.
 Ordinances or by-laws adopted hereunder may provide for the ap-
 pointment of alternate members not exceeding in number the princi-
 pal members who need not be from nominees of organizations entitled
 to nominate members. In case of the absence, inability to act or
 unwillingness to act because of self-interest on the part of a member
 of the commission, his place shall be taken by an alternate member
 designated by the chairman. Each member and alternate shall contin-
 ue in office after the expiration of his term until his successor is duly
 appointed and qualified. All members shall serve without compensa-
 tion. The commission shall elect annually a chairman and vice-chair-
 man from its own number and a secretary from within or without its
 number.

40C:5. Definitions.

Section 5. As used in this chapter the word "altered" includes the
 words "rebuilt", "reconstructed", "restored", "removed" and "demol-
 ished" and the phrase "changed in exterior color"; the word "build-
 ing" means a combination of materials forming a shelter for persons,
 animals or property; the word "commission" means the commission
 acting as the historic district commission; the word "constructed"
 includes the words "built", "erected", "installed", "enlarged", and
 "moved"; the words "exterior architectural feature" mean such por-
 tion of the exterior of a building or structure as is open to view from
 a public street, public way, public park or public body of water,
 including but not limited to the architectural style and general ar-
 rangement and setting thereof, the kind, color and texture of exterior
 building materials, the color of paint or other materials applied to
 exterior surfaces and the type and style of windows, doors, lights,
 signs and other appurtenant exterior fixtures; the words "person
 aggrieved" mean the applicant, an owner of adjoining property, an
 owner of property within the same historic district as property within
 one hundred feet of said property lines and any charitable corporation
 in which one of its purposes is the preservation of historic structures
 or districts; and the word "structure" means a combination of materi-
 als other than a building, including a sign, fence, wall, terrace, walk
 or driveway.

40C:6. Certificates of appropriateness, non-applicability or hardship; necessi-
 ty; applications and plans, etc.; building and demolition permits restricted.

Section 6. Except as the ordinance or by-law may otherwise pro-
 vide in accordance with section eight or said section eight or nine, no

building or structure within an historic district shall be constructed or altered in any way that affects exterior architectural features unless the commission shall first have issued a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship with respect to such construction or alteration.

Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application.

No building permit for construction of a building or structure or for alteration of an exterior architectural feature within an historic district and no demolition permit for demolition or removal of a building or structure within an historic district shall be issued by a city or town or any department thereof until the certificate required by this section has been issued by the commission.

40C:7. Factors to be considered by commission.

Section 7. In passing upon matters before it the commission shall consider, among other things, the historic and architectural value and significance of the site, building or structure, the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures the commission shall consider the appropriateness of the size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity, and the commission may in appropriate cases impose dimensional and set-back requirements in addition to those required by applicable ordinance or by-law. When ruling on applications for certificates of appropriateness for solar energy systems, as defined in section one A of chapter forty A, the commission shall also consider the policy of the commonwealth to encourage the use of solar energy systems and to protect solar access. The commission shall not consider interior arrangements or architectural features not subject to public view.

The commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the historic district.

40C:8. Review authority of commission over certain categories of buildings, structures or exterior architectural features limited; authorization.

Section 8. (a) Any city or town may provide in the ordinance or by-law establishing a district or in any amendment thereof that the authority of the commission shall not extend to the review of one or more of the following categories of buildings or structures or exterior architectural features in the historic district, and, in this event, the buildings or structures or exterior architectural features so excluded may be constructed or altered within the historic district without review by the commission:

(1) Temporary structures or signs, subject, however, to such conditions as to duration of use, location, lighting, removal and similar matters as the commission may reasonably specify.

(2) Terraces, walks, driveways, sidewalks and similar structures, or any one or more of them, provided that any such structure is substantially at grade level.

(3) Walls and fences, or either of them.

(4) Storm doors and windows, screens, window air conditioners, lighting fixtures, antennae and similar appurtenances, or any one or more of them.

(5) The color of paint.

(6) The color of materials used on roofs.

(7) Signs of not more than one square foot in area in connection with use of a residence for a customary home occupation or for professional purposes, provided only one such sign is displayed in connection with each residence and if illuminated is illuminated only indirectly; and one sign in connection with the nonresidential use of each building or structure which is not more than twelve square feet in area, consist of letters painted on wood without symbol or trademark and if illuminated is illuminated only indirectly; or either of them.

(8) The reconstruction, substantially similar in exterior design, of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.

(b) A commission may determine from time to time after public hearing that certain categories of exterior architectural features, colors, structures or signs, including, without limitation, any of those enumerated under paragraph (a), if the provisions of the ordinance or by-law do not limit the authority of the commission with respect thereto, may be constructed or altered without review by the commis-

sion without causing substantial derogation from the intent and purposes of this chapter. 41 42

(c) A city or town may provide in its ordinance or by-law, or in any amendment thereof, that the authority of the commission shall be limited to exterior architectural features within a district which are subject to view from one or more designated public streets, public ways, public parks or public bodies of water, although other portions of buildings or structures within the district may be otherwise subject to public view, and, in the absence of such provision of the ordinance or by-law, a commission may determine from time to time after public hearing that the authority of the commission may be so limited without substantial derogation from the intent and purposes of this chapter. 43 44 45 46 47 48 49 50 51 52 53

(d) Upon request the commission shall issue a certificate of nonapplicability with respect to construction or alteration in any category then not subject to review by the commission in accordance with the provisions of paragraph (a), (b) or (c). 54 55 56 57

40C:9. Maintenance and repair, etc.

Section 9. Nothing in this chapter shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within an historic district which does not involve a change in design, material, color or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of the applicable historic district ordinance or by-law. 1 2 3 4 5 6 7 8 9 10

40C:10. Additional powers, functions and duties of commission.

Section 10. The commission shall have the following additional powers, functions and duties:— (a) If the commission determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the historic district, the commission shall cause a certificate of appropriateness to be issued to the applicant. In the case of a disapproval of an application for a certificate of appropriateness the commission shall place upon its records the reasons for such determination and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefor as set forth in the records of the commission, to be issued to the applicant, and the commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material and similar features. Prior to the issuance of any 1 2 3 4 5 6 7 8 9 10 11 12 13 14

disapproval the commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal which, if made, would make the application acceptable to the commission. If within fourteen days of the receipt of such a notice the applicant files a written modification of his application in conformity with the recommended changes of the commission, the commission shall cause a certificate of appropriateness to be issued to the applicant.

(b) In the case of a determination by the commission that an application for a certificate of appropriateness or for a certificate of nonapplicability does not involve any exterior architectural feature, or involves an exterior architectural feature which is not then subject to review by the commission in accordance with the provisions of section eight, the commission shall cause a certificate of non-applicability to be issued to the applicant.

(c) If the construction or alteration for which an application for a certificate of appropriateness has been filed shall be determined to be inappropriate, or in the event of an application for a certificate of hardship, the commission shall determine whether, owing to conditions especially affecting the building or structure involved, but not affecting the historic district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this chapter. If the commission determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, or in the event of failure to make a determination on an application within the time specified in section eleven, the commission shall cause a certificate of hardship to be issued to the applicant.

(d) Each certificate issued by the commission shall be dated and signed by its chairman, vice-chairman, secretary or such other person designated by the commission to sign such certificates on its behalf.

(e) The commission shall keep a permanent record of its resolutions, transactions, and determinations and of the vote of each member participating therein, and may adopt and amend such rules and regulations not inconsistent with the provisions of this act and prescribe such forms as it shall deem desirable and necessary for the regulation of its affairs and the conduct of its business. The commission shall file a copy of any such rules and regulations with the city or town clerk.

(f) The commission shall file with the city or town clerk and with any department of the city or town having authority to issue building

permits a copy or notice of all certificates and determinations of 59
disapproval issued by it. 60

(g) A commission may after public hearing set forth in such 61
manner as it may determine the various designs of certain appurte- 62
nances, such as light fixtures, which will meet the requirements of an 63
historic district and a roster of certain colors of paint and roofing 64
materials which will meet the requirements of an historic district, but 65
no such determination shall limit the right of an applicant to present 66
other designs or colors to the commission for its approval. 67

(h) The commission may, subject to appropriation, employ clerical 68
and technical assistants or consultants and incur other expenses ~ 69
appropriate to the carrying on of its work, and may accept money 70
gifts and expend the same for such purposes. The commission may 71
administer on behalf of the city or town any properties or easements, 72
restrictions or other interests in real property which the city or town 73
may have or may accept as gifts or otherwise and which the city or 74
town may designate the commission as the administrator thereof. 75

(i) The commission shall have, in addition to the powers, authority 76
and duties granted to it by this act, such other powers, authority and 77
duties as may be delegated or assigned to it from time to time by vote 78
of the city council or town meeting. 79

**40C:11. Approval or disapproval of exterior architectural features by com-
mission; meetings; applications for certificates; public hearings; notices.**

Section 11. Meetings of a commission shall be held at the call of 1
the chairman and shall be called at the request of two members of the 2
commission and in such other manner as the commission shall deter- 3
mine in its rules. A majority of the members of a commission shall 4
constitute a quorum. The concurring vote of a majority of the mem- 5
bers of the commission shall be necessary to issue a certificate of 6
appropriateness, a certificate of non-applicability or a certificate of 7
hardship. 8

A commission shall determine promptly, and in all events within 9
fourteen days after the filing of an application for a certificate of 10
appropriateness, a certificate of non-applicability or a certificate of 11
hardship, as the case may be, whether the application involves any 12
exterior architectural features which are subject to approval by the 13
commission. If a commission determines that such application involves 14
any such features which are subject to approval by the commission 15
shall hold a public hearing on such application unless such hearing is 16
dispensed with as hereinafter provided. 17

The commission shall fix a reasonable time for the hearing on any 18
application and shall give public notice of the time, place and purposes 19
thereof at least fourteen days before said hearing in such manner as 20

it may determine, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors, to the planning board of the city or town, to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to such other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within sixty days after the filing of the application, or such lesser period as the ordinance or by-law may provide, or within such further time as the applicant may allow in writing, the commission shall make a determination on the application. If the commission shall fail to make a determination within such period of time the commission shall thereupon issue a certificate of hardship.

A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the commission if the commission determines that the exterior architectural feature involved or its category or color, as the case may be, is so insubstantial in its effect on the historic district that it may be reviewed by the commission without public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided and ten days shall elapse after the mailing of such notice before the commission may act upon such application.

40C:12. Review procedure provided by local ordinance or by-law.

Section 12. A city or town may provide in its ordinance or by-law or in any amendment thereof, for a review procedure whereby any person aggrieved by a determination of the commission may, within twenty days after the filing of the notice of such determination with the city or town clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters, designated by the regional planning agency of which the city or town is a member. If the city or town is not a member of a regional planning agency, the department of community affairs shall select the appropriate regional planning agency.

The finding of the person or persons making such review shall be filed with the city or town clerk within forty-five days after the request, and shall be binding on the applicant and the commission, unless a further appeal is sought in the superior court as provided in section twelve A.

40C:12A. Appeal to superior court.

Section 12A. Any person aggrieved by a determination of the commission, or by the finding of a person or persons making a review, if the provisions of section twelve are included in a local ordinance or by-law, may, within twenty days after the filing of the notice of such determination or such finding with the city or town clerk, appeal to the superior court sitting in equity for the county in which the city or town is situated. The court shall hear all pertinent evidence and shall annul the determination of the commission if it finds the decision of the commission to be unsupported by the evidence or to exceed the authority of the commission, or may remand the case for further action by the commission or make such other decree as justice and equity may require. The remedy provided by this section shall be exclusive but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against the commission unless it shall appear to the court that the commission acted with gross negligence, in bad faith or with malice in the matter from which the appeal was taken. Costs shall not be allowed against the party appealing from such determination of the commission unless it shall appear to the court that such party acted in bad faith or with malice in making the appeal to the court.

40C:13. Jurisdiction of superior court; penalty.

Section 13. The superior court sitting in equity for the county in which the city or town is situated shall have jurisdiction to enforce the provisions of this chapter and any ordinance or by-law enacted hereunder and the determinations, rulings and regulations issued pursuant thereto and may, upon the petition of the mayor or of the board of selectmen or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure or exterior architectural feature altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this chapter shall be punished by a fine of not less than ten dollars nor more than five hundred dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense.

40C:14. Powers and duties of commissions established hereunder as historical commissions.

Section 14. If the city council or town meeting so votes a commission established hereunder shall have the powers and duties of an historical commission as provided in section eight D of chapter forty

and, in this event, a commission may be entitled an historical commission. 4
5

40C:15. Filing of ordinances, maps, reports, etc.

Section 15. All ordinance or by-laws creating an historic district 1
adopted by a city or town under authority of this chapter and under 2
authority of any special law, unless the special law shall otherwise 3
provide, amendments thereto, maps of historic districts created there- 4
under, and annual reports and other publications of commissions, and 5
rosters of membership therein, shall be filed with the Massachusetts 6
historical commission. 7

40C:16. Special historic districts; acceptance and effect of this chapter.

Section 16. A city or town in which there is located an historic 1
district established under a special law may, upon recommendation of 2
the historic district commission having jurisdiction over such district, 3
accept the provisions of this chapter with respect to such district by a 4
two-thirds vote of the city council in a city or by two-thirds vote of a 5
town meeting in a town, and thereafter such historic district shall be 6
subject to the provisions of this chapter notwithstanding the terms of 7
any special act pursuant to which such historic district was created. 8
The provisions of this chapter shall not impair the validity of an 9
historic district established under any special act. 10

40C:17. Severability.

Section 17. The provisions of this chapter shall be deemed to be 1
severable if any of its provisions shall be held to be invalid or 2
unconstitutional by any court of competent jurisdiction the remaining 3
provisions shall continue in full force and effect. 4

HISTORIC DISTRICTS ACT (G.L. CH. 40C)

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